



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4812 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

MEMORIAL HERMANN HOSPITAL SYSTEM  
3200 SW FREEWAY SUITE 2200  
HOUSTON TX 77027

#### **Carrier's Austin Representative Box**

19

#### **MFDR Date Received**

August 23, 2006

#### **Respondent Name**

VANLINER INSURANCE CO

#### **MFDR Tracking Number**

M4-07-0112-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary Dated August 21, 2006:** "The injured employee was treated at Memorial Hermann from August 31, 2005 through September 7, 2005. The patient's injury rendered this back surgery a complicated procedure due to the extensive services and supplies provided. The nature of the patient's extensive back injury and post operative care required the patient to incur unusually costly services and medical supplies during his stay. ...The hospital billed its usual and customary charges in the total amount of \$132,461.39. Due to the unusually costly and extensive services and supplies provided and the patient's extended length of stay, the hospital's usual and customary charges for room and board, ancillary services, drug charges and implants exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401 (c)(6). There were no charges which were, or should have been deducted from the charges pursuant to Rule 134.401(c)(6)(A)(v) and the carrier did not perform an audit. Accordingly the carrier should have applied the Stop-Loss Reimbursement Factor (SLRF) and paid 75% of the hospital's usual and customary charges, Rule 134.401 (c)(6)(a)(iii)."

**Requestor's Supplemental Position Summary Dated November 10, 2011:** "The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method. ...Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement of \$72,364.58."

**Affidavit of Michael C. Bennett dated November 10, 2011:** "I am the System Executive of Patient Business Services for Memorial Hermann Healthcare System (the 'Hospital')." "The attached Exhibit A is the itemized statement and claim form that provides a record of information for services and supplies that the Hospital provided to the patient. This patient was admitted and surgically treated at the Hospital from August 31, 2005 through September 7, 2005. The medical records indicate that this injured worker underwent a complicated anterior and posterior lumbar fusion with intramentation due to unresolved issues from his original on-the-job injury of October 22, 2204. ...The charges reflected on the attached Exhibit A are the usual and customary fees charged for like or similar services and do not exceed the fees charged for similar treatment of an individual of an equivalent standard of living and paid by someone acting on that individual's behalf." "On the dates stated in the attached records, the Hospital, as noted, provided surgical care and subsequent post operative services to this patient who incurred the usual and customary charges in the amount of \$132,461.39 which is a fair and reasonable rate for the services and supplies provided during this patient's hospitalization. Due to the nature of the patient's injuries and need for surgical intervention, the admission required unusually costly services."

**Requestor's Supplemental Position Summary Dated November 28, 2011:** "The Court further determined that to apply the Stop-Loss Exception, a hospital is required to demonstrate that its total audited charges exceed \$40,000, and the admission involved unusually costly and unusually extensive services to receive reimbursement under the Stop-Loss method". "Based upon this information, Memorial Hermann has met its burden under the Stop-Loss exception and is entitled to the additional reimbursement."

**Affidavit of Patricia L. Metzger dated November 21, 2011:** "I am the Chief of Care Management for Memorial Hermann Healthcare System (the 'Hospital')." "Based upon my review of the records, my education, training, and experience in patient care management, I can state that based upon the patient's diagnosis and surgical treatment, the services and procedures performed on this patient were complicated and unusually extensive."

**Amount in Dispute:** \$87,048.04

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary Dated October 27, 2006:** "...Requestor billed Carrier \$132,461.39 for this seven day stay. ...the Provider has failed to justify the use of the stop-loss method. Provider has provided no evidence or made any arguments that there were any "unusually costly services" or that the care rendered during this admission included "unusually extensive services." ... Carrier is due and requests reimbursement in the amount of \$8,273.30."

**Response Submitted by:** Law Office of M.K. Kidd, P.O. Box 151780, Austin, Texas 78715-1780

### ***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
August 31, 2005 thru September 7, 2005	Inpatient Hospital Services	\$87,048.04	\$7,068.91

### ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits Dated: September 29, 2005

- 16 Claim/service lacks information which is needed for adjudication. Additional information is supplied using the remittance advice remarks codes whenever appropriate.
- 17 Payment adjusted because requested information was not provided or was insufficient/incomplete. Additional information is supplied using the remittance advice remarks codes whenever appropriate.
- 45 Charges exceed your contracted/legislated fee arrangement.
- 851-063 PER CARRIER. INVOICE REQUIRED FOR IMPLANT REIMBURSEMENT
- 855-022 CHARGE DENIED DUE TO LACK OF SUFFICIENT DOCUMENTATION OF SERVICES RENDERED
- BILL NOTES CHARGE DENIED DUE TO LACK OF SUFFICIENT DOCUMENTATION OF SERVICES RENDERED.

Explanation of Benefits Dated: January 13, 2006

- 17 Non-covered charges.
- 45 Charges exceed your contracted/legislated fee arrangement.
- 851-063 PER CARRIER. INVOICE REQUIRED FOR IMPLANT REIMBURSEMENT
- 855-022 RECOMMENDED ALLOWANCE IS IN ACCORDANCE WITH WORKERS COMPENSATION MEDICAL FEE SCHEDULE GUIDELINES.
- 993 THIS SERVICE IS NOT REIMBURSABLE
- BILL NOTES Manufacturer's invoices for implants needed

Explanation of Benefits Dated: March 1, 2006

- 055-002 RECOMMENDED ALLOWANCE IS IN ACCORDANCE WITH WORKERS COMPENSATION MEDICAL FEE SCHEDULE GUIDELINES
- W1 Workers Compensation State Fee Schedule Adjustment
- BILL NOTES Manufacturer's invoices for implants needed

Explanation of Benefits Dated: August 14, 2006

- 45 Charges exceed your contracted/legislated fee arrangement
- 851-064 IMPLANT REIMBURSEMENT HAS BEEN RECOMMENDED AT FAIR AND REASONABLE RATE \$22,527.46
- 855-016 PAYMENT RECOMMENDED AT FAIR AND REASONABLE
- W10 No maximum allowable defined by fee guideline. Reimbursement made based on insurance carrier fair and reasonable reimbursement methodology.
- BILL NOTES The records do not demonstrate the provision of unusually extensive & costly services. Therefore, the stop-loss exception does not apply.

### Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?
5. Is the respondent entitled to an order or reimbursement or refund?

### Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the

carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$86,231.00. The Division concludes that the total audited charges exceed \$40,000.

2. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals’ November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services” and further states that “...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases.” The requestor in its original position statement states that “Due to the nature of the patient’s extensive back surgery and post operative course, the patient required unusually extensive services and medical supplies during his stay. The patient remained hospitalized for a period of 7 days post operatively.” “Because the hospital’s usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges.” This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. In its supplemental position statement, the requestor asserts that: “This patient underwent surgical intervention including Gill decompression, L%, bilateral L4-L5 and L5-S1 decompression, instrumented spinal fusion over L4, L5 and S1 segments using the pedicle screw and rod system, posterior spinal fusion L4-S1 with insertion of an epidural catheter. The multiple procedure performed by the treating physician is inherently complicated and extensive.” In support of the requestor’s position that the services rendered were unusually extensive, the requestor submitted affidavits from the System Executive of Patient Business Services for Memorial Hermann Healthcare System, and from the Chief of Care Management for Memorial Hermann Healthcare System. The requestor’s supplemental position and affidavits failed to meet the requirements of §134.401(c)(2)(C) because the requestor does not demonstrate how the services in dispute were unusually extensive compared to similar spinal surgery services or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
3. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor’s position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was seven days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of seven days results in an allowable amount of \$7826.00.
  - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Rev Code or Charge Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
67300805	Pump Pain Disp Ea	NO SUPPORT FOR COST/INVOICE	1 UNIT	NOT SUPPORTED	0.00

51184000	CANCELLOUS SCREW	6.5MM TI CANCELLOUS BONE SCREW FULLY THREADED 25MM	2 UNITS @ \$26.25 EA	\$26.25	\$57.75
51151000	SPINE ROD	SR90D 5.5X60MM SPINAL ROD	2 UNITS @ \$250.75 EA	\$250.75	\$551.65
51152000	Pedicle hook screw	SR90D MULTIANGLESCR EW	6 UNITS @ \$1,019.15 EA	\$1,019.15	\$6,726.39
51158000	SPINE IBF (BONE)	CORLOK ALLOGRAFT LUMBAR SYSTEM	2 UNITS @ \$4,800.00 EA	\$4,800.00	\$10,560.00
51161000	BONE GRAFT SUBSTITUTES	123110 GRAFTON PUTTY 10CC	1 UNIT @ \$1,027.90 EA	\$1,027.90	\$1,130.69
51161000	BONE GRAFT SUBSTITUTES	523110 GRAFTON PUTTY 10CC	1 UNIT @ \$1,027.90 EA	\$1,027.90	\$1,130.69
51161000	BONE GRAFT SUSTITUTES	800080 CRUSHED CANCELLOUS, 30CC	1 UNIT @ \$499.00 EA	\$499.00	\$548.90
51165000	BONE MORPHOGENIC PROTEIN IMP	INFUSE BONE GRAFT	1 UNIT @ \$4,990.00 EA	\$4,990.00	\$5,489.00
51186000	MISC TRAUMA SCREW	WASHER 13.0.MM	2 UNITS @ \$21.50	\$21.50	\$47.30
TOTAL ALLOWABLE				\$__26,242.37__	

- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$507.25/Cardene IV 2.5mg/ml 10 ml. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.
5. In its response to the request for medical fee dispute resolution, the insurance carrier and respondent in this dispute requested “Carrier is due and requests reimbursement in the amount of \$8,273.30.” Former 28 Texas Administrative Code §133.304(p), 17 Texas Register 1105, effective February 20, 1992, provided, in pertinent part, that “An insurance carrier may request medical dispute resolution in accordance with §133.305 if... the insurance carrier has requested a refund under this section, and the health care provider: (1) failed to make payment by the 60th day after the date the insurance carrier sent the request for refund...” Former 28 Texas Administrative Code §133.305(a)(2)(C), 27 Texas Register 12282, effective January 1, 2003, provided that “a carrier dispute of a health care provider reduction or denial of the carrier request for refund of payment for health care previously paid by the carrier (refund request dispute)” can be a medical fee dispute. Former 28 Texas Administrative Code §133.307(b)(3), 27 Texas Register 12282, effective January 1, 2003, specified that “The carrier... in a dispute involving a carrier's refund request” may be a requestor in a medical fee dispute. Section 133.307(e) required that “...carrier requests for medical dispute resolution shall be made in the form, format, and manner prescribed by the commission.” Section 133.307(e)(2)(B) required that the request shall include “a copy of each... response to the refund request relevant to the fee dispute...” The division finds that the insurance carrier's position statement in response to the health care provider's request for medical fee dispute resolution does not constitute a request for refund request dispute resolution in the form and manner required by former applicable version of 28 Texas Administrative Code §133.307. Furthermore, no documentation was found to support that the insurance carrier ever presented a refund request to the health care provider to support its burden of proof for a specific refund amount in accordance with §133.304(p). The division concludes that the insurance carrier has not met the requirements of §133.304(p) or §133.307(e). For these reasons, the respondent's request for an order of reimbursement is not proper, and is not supported. An order of reimbursement for the respondent is therefore not recommended

The division concludes that the total allowable for this admission is \$34,068.37. The respondent issued payment in the amount of \$26,999.46. Based upon the documentation submitted, additional reimbursement in the amount of \$7,068.91 is recommended.

### **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in additional reimbursement .

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby **ORDERS** the respondent to remit to the requestor the amount of \$7,068.91 plus applicable accrued interest per 28 Texas Administrative Code §134.803 , due within 30 days of receipt of this Order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

\_\_\_\_\_  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**